

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Mauro Aniello

Date application filed with the Town Clerk: April 12, 2007

Nature of request: A Special Permit to operate a Class II restaurant serving alcohol, under Section 3.352.1 of the Zoning Bylaw, including pizza take-out and delivery, seasonal outdoor dining under Section 5.041 and occasional live entertainment under Section 5.042, similar to the former La Cucina de Pinocchio

Address: 30 Boltwood Walk (Map 14A, Parcel 61, B-G Zoning District)

Legal notice: Published on May 9 and 16, 2007 in the Daily Hampshire Gazette and sent to abutters on May 11, 2007

Board members: Barbara Ford, Hilda Greenbaum and Russ Frank

Submissions: The petitioner submitted with the application the site plan, the floor plan of the proposed restaurant drawn by Kuhn Riddle Architects, the management plan and sample menus.

The zoning staff assistant submitted a memo dated May 18, 2007 which described the previous Special Permits for Pinocchio's Restaurant, and discussed parking, signs, lighting and the proposed management plan.

Site Visit: May 23, 2007

The Board met with Mr. Aniello at the site. They observed the following:

- A large first floor restaurant space facing the public Boltwood parking garage;
- The three separate dining rooms, the bar and tappas area and the outdoor dining area;
- A large kitchen, with separate prep room and separate pizza preparation area, and steps to the basement storage area;
- The pizza take out counter with an entrance counter separate from the restaurant;
- The new men's restroom and the existing women's restroom.

Public Hearing: May 24, 2007

Claire and Mauro Aniello spoke to the application at the hearing. They gave the following information:

- They own #30 Boltwood Walk, a condominium in the historic Webster House that was formerly Pinocchio's Restaurant;
- They wish to restore the space to the kind of Class II restaurant that it was when they owned Pinocchio's;
- They have submitted a management plan that has the same hours of operation as did their previous Special Permits. That is:
 - Food preparation beginning at 7 AM;
 - Food service from 10 AM to 12:30 AM in the restaurant;

- Pizza take-out from 10 AM to 3 AM, with the last delivery at that time.
- Seating will be for 110 indoor and 16 outdoor;
- Number of employees will be a maximum of 10 at any one time;
- The outdoor seating will be seasonal, and is located on the property in front of the restaurant, not on the larger area to the south as it was before;
- The patio to the south was removed by the previous owner and no longer exists;
- The outdoor furniture will be kept in the basement during the off season;
- The applicant will install decking for the outdoor space similar to the Monkey Bar, and a barrier of canvas material/posts will be installed between the deck and the sidewalk;
- John Kuhn of Kuhn-Riddle Architects will be designing the outdoor deck and canvas separator;
- Food will not be served on the deck after 11 PM;
- Inside will be three dining rooms and a lounge area;
- The hostess will be located in the lounge area, which will have seating for 10 at the bar and 10 at “tappas” tables;
- The men’s restroom is in a different location now (behind the bar & next to the kitchen area), but the ladies’ room is in the same location;
- Trash (6 containers) and recycling (3 containers) are stored in the Town built shed located to the north of the restaurant. Allied Waste Company removes the waste 3 days per week;
- Western Mass Renderings collects the waste kitchen oil for recycling; the company pays the petitioner to pick up the waste oil;
- Since the restaurant is located in a municipal zone, no on site parking is required for the operation;
- There are no reserved spaces in the Boltwood Walk area for the pizza drivers. The drivers are trained to wait for a space, and do not double park or leave their car unattended. In 19 years of his delivery business, the applicant has had no problems with the drivers. The drivers often buy parking garage tickets for the entire night, so that they will not have to pay for every pickup;
- The only possible landscaping around the restaurant will be removable planters, and the petitioner plans to have outdoor flower planters in season;
- Deliveries of supplies are made to both the front and rear doors. There are Town restrictions on deliveries downtown and loading zones. The restaurant deliveries are most often done between 9 and 11:30 AM. Occasionally some deliveries are made up until 2 PM;
- Outdoor lighting will be the same as existing lighting, though some new lamp posts will be added for the outdoor area;
- The sign size will be the same as the previous sign, but will have a different name printed on it – La Piazza Ristorante;
- All bartender and wait staff will be trained in alcohol service and certified by the TIPS program; all of the petitioner’s staff know how to handle excess alcohol use;
- As permitted before, live entertainment may be offered for an occasional booked party such as a rehearsal dinner or graduation party. It will be no larger than a three piece group, such as a harp and/or violin and will be supplied by the party organizer;
- There will be no music outdoors. Inside will be piped background music such as Sinatra or Vivaldi;
- The lighting inside will stay constant all evening; it will not be dimmed to create a nightclub atmosphere.

Two members of the public spoke to the petition. Kathy Koplow, manager of the Clark House, a privately owned, 100 unit apartment building next door, said that the Amherst Redevelopment Authority included elderly housing in the original plan for the Boltwood Walk area. She emphasized that the Clark House is a

business as are restaurants and it is sensitive to excessive noise or rowdiness. When previous tenants of the Webster House were out of control, it hurt the Clark House. She had no objection to Pinocchio's, but wants the Board to place extra conditions on this Special Permit, such as 1) no service of customers who are standing, inside or out, 2) pizza take out limited to 1 am., 3) no outdoor music, 4) no amplified music inside, 5) no cooking on the terrace, 6) a review of the Special Permit in 6 months, and all aspects of Section 10.38 of the Bylaw satisfied in terms of the Clark House residents.

Elizabeth Massey, a resident of Clark House, said that she's known the applicant for years, and is delighted that he is coming back. However, she's concerned that the pizza take-out will be open until 3 am. She's also concerned that serving alcohol until 12:30 am would make the establishment a student bar.

Mr. Aniello responded that he will have normal restaurant hours, with the last order taken at 10 PM and service until 11 or 11:30 PM. After that a light menu of tappas will be available until closing. The restaurant will remain a restaurant and will not evolve into anything else.

Ms. Ford agreed, noting that the higher menu prices will keep most students away.

Mr. Aniello also said that a food delivery service helps to keep people out of the downtown and keeps the noise down. His drivers do not play loud music or add to the noise level downtown. Also, the petitioner feels that the garage buffers more of the downtown noise from North Pleasant Street than it did earlier.

In answer to a Board question about the number of employees after 1 AM, the applicant stated that he generally has 3 employees plus a manager working at the pizza take-out from 1 to 3 AM; the manager is there until closing. Mr. Aniello further stated that his staff is quiet and knows how to control noise. They set a good example for the customers.

Mr. Frank asked the petitioner what percent of his business is food pickup after 1 AM. The applicant said that it is less than 1% of his business, and would be willing to give it up as a compromise to the neighbors.

Mr. Frank made a motion to close the evidentiary portion of the hearing. Ms. Ford seconded the motion, and the vote was unanimous to close the evidentiary portion of the hearing.

Public Meeting:

The Board expressed support for the petitioner's undertaking to restore a popular restaurant that had been devastated by a fire in the building several years ago. They reviewed Section 10.38 of the Bylaw, and found no objection to the restaurant as proposed.

The Board spent the rest of the public meeting crafting conditions for the Special Permit.

After review of the findings and conditions, Mr. Frank made a motion to approve the conditions and findings for granting a Special Permit to the petitioner for a restaurant. Ms. Greenbaum seconded the motion, and the vote was unanimous to approve the findings and conditions for the application.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because the Boltwood Walk area is central to the General Business District. The immediate neighborhood has a variety of businesses, including several restaurants, bookstores and clothing stores.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the restaurant is located on the west side of the Webster building facing the garage, not near the Clark House, the outdoor dining will not be near housing, and the restaurant windows will be closed, and it will be geared to adult dining, not a student bar.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the Boltwood garage area where the restaurant is located has been designed for safe pedestrian and vehicular traffic. The immediate abutter to the north is the Bangs Community Center, which is closed on the weekends. The abutters to the south and west are businesses similar to this proposal. Limiting the walk-in trade to before 1 AM only will help to eliminate any possible noise issues with the residents to the east (Clark House) and north (Ann Whalen House.).

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the petitioner is restoring a restaurant that had been successfully run for over 10 years. The Management Plan has described adequate and appropriate details for the proposed restaurant.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the site is within the municipal zone, which does not require on-site parking and the take-out drivers will pay for parking in the garage. All signs will be reviewed by the Design Review Board before approval by the Board at a future public meeting.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the restaurant shares a waste shed with the Bangs Center and waste/recycling is picked up 3 times/week.

10.391 and 10.395 – The proposal protects unique or important natural, historic or scenic features because no changes are being made to the exterior of the historic Webster House other than what had been done in the past.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because any outdoor lighting will be downcast and on the westerly side of the building, away from residences.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it promotes economic development of the downtown, provides an upscale place for adults to dine, while it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Ms. Greenbaum made a motion to APPROVE the application with conditions. Mr. Frank seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to operate a Class II restaurant serving alcohol, under Section 3.352.1 of the Zoning Bylaw, including pizza take-out and delivery, seasonal outdoor dining under Section 5.041 and occasional live entertainment under Section 5.042, similar to the former La Cucina de Pinocchio on the premises at 30 Boltwood Walk, (Map 14A, Parcel 61, B-G Zoning District) as requested in the application filed by Mauro Aniello, with conditions.

BARBARA FORD

HILDA GREENBAUM

RUSSELL FRANK

FILED THIS _____ day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2007.
NOTICE OF DECISION mailed this _____ day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2007,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to operate a Class II restaurant serving alcohol, under Section 3.352.1 of the Zoning Bylaw, including pizza take-out and delivery, seasonal outdoor dining under Section 5.041 and occasional live entertainment under Section 5.042, similar to the former La Cucina de Pinocchio on the premises at 30 Boltwood Walk, (Map 14A, Parcel 61, B-G Zoning District) as requested in the application filed by Mauro Aniello subject to the following conditions:

1. The number of patrons inside the restaurant, including live entertainment, shall not exceed 110, as determined by standards set forth in the Massachusetts Building Code.
2. The number of employees shall not exceed 10 at any one time.
3. The number of seats on the outdoor patio shall not exceed 16.
4. The operation of the restaurant shall be as described in the Management Plan as presented at the public hearing on May 24, 2006. The final revision of the Management Plan shall be approved by the Board at a public meeting prior to issuance of the occupancy permit.
5. The restaurant shall be built according to the floor plans drawn by Kuhn-Riddle Architects and approved by the Board at the hearing on May 24, 2007
6. The hours of operation open to the public shall not exceed 10 AM to 1 AM.
7. The patio service shall cease at 11 PM.
8. A full menu shall be available to patrons of the restaurant until 10 PM, and a lighter menu after 10 PM. Food shall be served until closing.
9. The hours of operation for the pizza delivery service shall take place within the hours of 10 AM to 3 AM, and the take-out window for the general public shall not be open after 1 AM.
10. There shall be sufficient employees available for possible crowd control until 3 AM.
11. Take-out delivery vehicles must park in legal parking spaces for food pickup.
12. Refuse and recycling shall be disposed of according to the Management Plan as presented to the Board at the hearing.
13. The petitioner shall maintain the area surrounding the restaurant so that it remains clear of litter.
14. Live entertainment in the form of acoustic music (or with minimal amplification) shall be permitted indoors only with windows closed. The volume of sound generated by live entertainment shall not exceed average background levels at the property line.
15. Lights shall not be dimmed during any live entertainment.
16. All exterior lighting shall be downcast.
17. All signs, lighting and outdoor furniture shall be reviewed by the Design Review Board and submitted to the Board for approval at a public meeting prior to issuance of the occupancy permit.
18. Vendor deliveries received by the restaurant shall not occur before 9 AM or after 3 PM.
19. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in responsible methods of alcohol service.
20. This permit shall expire upon change of ownership. Upon change in management a new management plan shall be submitted to the board for review and approval at a public meeting.

BARBARA FORD, Chair
Amherst Zoning Board of Appeals

DATE

